

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON

JAMES PAYNE,

Petitioner

v.

Case No. 2:10-cv-00221

DAVID BALLARD

Respondent.

PROPOSED FINDINGS AND RECOMMENDATION

On March 3, 2010, Petitioner filed an Application to Proceed Without Prepayment of Fees and Costs (# 1) and a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (## 1 and 3) on the forms used by this court for such proceedings. However, Petitioner did not complete the section 2254 petition in its entirety and he did not sign either the Application or Petition forms.

Thus, on March 24, 2010, the undersigned entered an Order directing Petitioner to file completed forms within 30 days, or the court would dismiss the civil action without prejudice. Since that time, Plaintiff has not filed any additional forms and he has taken no action whatsoever to move this case forward.

The undersigned proposes that the presiding District Judge **FIND** that Plaintiff has wholly failed to prosecute this civil action. Accordingly, it is respectfully **RECOMMENDED** that the

presiding District Judge **DISMISS** this matter without prejudice for failure to prosecute, and **DENY** without prejudice Petitioner's Application to Proceed Without Prepayment of Fees and Costs (# 1).

Plaintiff is notified that this Proposed Findings and Recommendation is hereby **FILED**, and a copy will be submitted to the Honorable Joseph R. Goodwin, Chief United States District Judge. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(C), and Rules 6(d) and 72(b), Federal Rules of Civil Procedure, Plaintiff shall have fourteen days (filing of objections) and then three days (service/mailing), from the date of filing this Proposed Findings and Recommendation within which to file with the Clerk of this Court, specific written objections, identifying the portions of this Proposed Findings and Recommendation to which objection is made, and the basis of such objection. Extension of this time period may be granted by the presiding District Judge for good cause shown.

Failure to file written objections as set forth above shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984). Copies of such objections shall be served on Chief Judge Goodwin.

The Clerk is directed to file this Proposed Findings and Recommendation and to mail a copy of the same to Plaintiff.

May 19, 2010

Date

Mary E. Stanley
Mary E. Stanley
United States Magistrate Judge